

REMARKS

By this Office Action, the Examiner has required restriction to one of the following inventions under 35 U.S.C. §121:

- I. Claims 1-9, drawn to the special technical feature of an isolated bacterial apoptogenic-bacteriocin and pharmaceutical composition.
- II. Claims 10 and 11, drawn to the special technical feature of a recombinant DNA molecule or cloned gene that has a nucleotide sequence or is complementary to a DNA sequence capable of encoding the amino acid sequence set out in a SEQ ID NO.
- III. Claims 12-14, 17-19, drawn to the special feature of a method for apoptosis of tumor cells, cancer cells, or cells undergoing aberrant growth comprising administering apoptogenic-bacteriocin.
- IV. Claims 15 and 16, drawn to the special technical feature of a method for reducing or blocking eukaryotic cell growth in a mammal comprising administering apoptogenic-bacteriocin.
- V. Claims 20 and 21, drawn to the special technical feature of a method for apoptosis of tumor cells comprising infecting a mammal with bacteria, virus or pathogen expressing apoptogenic-bacteriocin comprising an amino acid sequence.

Responsive to the Requirement for Restriction, Applicants elect to prosecute the invention of Group III, with traverse, Claims 12-14, 17-19, which are drawn to a method for apoptosis of tumor cells, cancer cells, or cells undergoing aberrant growth comprising administering apoptogenic-bacteriocin.

Applicants respectfully request reconsideration of the Requirement for Restriction, or in the alternative, modification of the Restriction Requirement to allow prosecution of more than one group of Claims designated by the Examiner in the present Application, for the reasons provided as follows.

Under 35 U.S.C. §121 "two or more independent and distinct inventions ... in one Application may ... be restricted to one of the inventions." Inventions are "'independent'" if "there is no disclosed relationship between the two or more subjects disclosed" (MPEP 802.01).

The term "distinct" means that "two or more subjects as disclosed are related ... but are capable of separate manufacture, use or sale as claimed, AND ARE PATENTABLE OVER EACH OTHER" (MPEP 802.01) (emphasis in original). However, even with patentably distinct inventions, restriction is not required unless one of the following reasons appear (MPEP 808.02):

1. Separate classification
2. Separate status in the art; or
3. Different field of search.

Further, under Patent Office Examining Procedures, "[i]f the Search and Examination of an entire Application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions" (MPEP 803, Rev. 8, May 1988) (emphasis added).

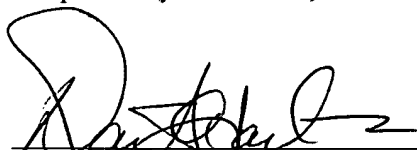
Applicants respectfully submit that the groups designated by the Examiner fail to define compositions and methods, with properties so distinct as to warrant separate Examination and Search. Claims 15 and 16 of Group IV are drawn to a method for reducing or blocking eukaryotic cell growth in a mammal comprising administering apoptogenic-bacteriocin that are fundamentally related to Claims 12-14 and 17-19 of Group III, drawn to a method for apoptosis of tumor cells, cancer cells, or cells undergoing aberrant growth comprising administering apoptogenic-bacteriocin. The search for any of the methods separately classified by the Examiner as the invention of Group III would require an additional search of the identical classes wherein the methods of Group IV are classified, thus resulting in a duplicate search for the same material. Thus, Applicants submit that the Search and Examination of the entire Application, or, at least, of Group III with Group IV can be made without serious burden, and therefore the Examiner must examine all of the claims of the Application on the merits.

The Examiner's assertions to the contrary notwithstanding, Applicants respectfully submit that conjoint examination and inclusion of all of the Claims of the present Application would not present an undue burden on the Examiner, and accordingly, withdrawal of the Requirement for Restriction, or, at the least, modification to include the Claims drawn to Group III and Group IV is in order.

No fees are believed to be necessitated by the foregoing Response. However, should this be erroneous, authorization is hereby given to charge Deposit Account No. 11-1153 for any underpayment, or credit any overages.

In view of the above, withdrawal of the Requirement for the Restriction is requested, and an early action on the merits of the Claims is courteously solicited.

Respectfully submitted,



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